

110TH CONGRESS
2D SESSION

H. R. 6390

To amend the Internal Revenue Code of 1986 to provide a credit against tax for certain caregivers, to expand the dependent care credit, and to increase the exclusion limitation for dependent care assistance programs.

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2008

Ms. CORRINE BROWN of Florida introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide a credit against tax for certain caregivers, to expand the dependent care credit, and to increase the exclusion limitation for dependent care assistance programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Caregiver Financial
5 Relief Act of 2008”.

6 **SEC. 2. REFUNDABLE CREDIT FOR LONG-TERM CARE.**

7 (a) GENERAL RULE.—Subpart C of part IV of sub-
8 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to refundable credits) is amended by redес-
 2 ignating section 36 as section 37 and by inserting after
 3 section 35 the following new section:

4 **“SEC. 36. FAMILY CARE CREDIT.**

5 “(a) ALLOWANCE OF CREDIT.—There shall be al-
 6 lowed as a credit against the tax imposed by this chapter
 7 for the taxable year an amount equal to the sum of \$3,000
 8 multiplied by the number of applicable individuals with re-
 9 spect to whom the taxpayer is an eligible caregiver for the
 10 taxable year.

11 “(b) LIMITATION.—

12 “(1) APPLICABLE INDIVIDUALS TAKEN INTO
 13 ACCOUNT.—For purposes of this section, a taxpayer
 14 may not take into account more than 2 applicable
 15 individuals (4 in the case of a joint return) for any
 16 taxable year.

17 “(2) BASED ON ADJUSTED GROSS INCOME.—

18 “(A) IN GENERAL.—The amount of the
 19 credit allowable under subsection (a) shall be
 20 reduced (but not below zero) by \$100 for each
 21 \$1,000 (or fraction thereof) by which the tax-
 22 payer’s modified adjusted gross income exceeds
 23 the threshold amount. For purposes of the pre-
 24 ceding sentence, the term ‘modified adjusted
 25 gross income’ means adjusted gross income in-

1 creased by any amount excluded from gross in-
2 come under section 911, 931, or 933.

3 “(B) THRESHOLD AMOUNT.—For purposes
4 of this paragraph, the term ‘threshold amount’
5 means—

6 “(i) \$150,000 in the case of a joint
7 return, and

8 “(ii) \$100,000 in the case of an indi-
9 vidual who is not married, and

10 “(iii) \$75,000 in the case of a married
11 individual filing a separate return.

12 “(c) DEFINITIONS.—For purposes of this section—

13 “(1) APPLICABLE INDIVIDUAL.—

14 “(A) IN GENERAL.—The term ‘applicable
15 individual’ means, with respect to any taxable
16 year, any individual who has been certified, be-
17 fore the due date for filing the return of tax for
18 the taxable year (determined without regard to
19 extensions), by a physician (as defined in sec-
20 tion 1861(r) of the Social Security Act) as
21 being an individual with long-term care needs
22 described in subparagraph (B) for a period—

23 “(i) which is at least 180 consecutive
24 days, and

1 “(ii) a portion of which occurs within
2 the taxable year.

3 Such term shall not include any individual oth-
4 erwise meeting the requirements of the pre-
5 ceding sentence unless within the 39½ month
6 period ending on such due date (or such other
7 period as the Secretary prescribes) a physician
8 (as so defined) has certified that such indi-
9 vidual meets such requirements.

10 “(B) INDIVIDUALS WITH LONG-TERM CARE
11 NEEDS.—An individual is described in this sub-
12 paragraph if the individual meets any of the fol-
13 lowing requirements:

14 “(i) The individual is at least 6 years
15 of age and—

16 “(I) is unable to perform (with-
17 out substantial assistance from an-
18 other individual) at least 3 activities
19 of daily living (as defined in section
20 7702B(c)(2)(B)) due to a loss of
21 functional capacity,

22 “(II) requires substantial super-
23 vision to protect such individual from
24 threats to health and safety due to se-
25 vere cognitive impairment and is un-

1 able to perform at least 1 activity of
2 daily living (as so defined) or to the
3 extent provided in regulations pre-
4 scribed by the Secretary (in consulta-
5 tion with the Secretary of Health and
6 Human Services), is unable to engage
7 in age appropriate activities, or

8 “(III) requires substantial super-
9 vision to protect such individual from
10 threats to health and safety due to a
11 severe psychological disability, mental
12 retardation, or related developmental
13 disabilities and would otherwise re-
14 quire residence in a psychiatric hos-
15 pital, an intermediate care facility for
16 the mentally retarded, or similar resi-
17 dential facility approved by the Sec-
18 retary of Health and Human Services.

19 “(ii) The individual is at least 2 but
20 not 6 years of age and is unable due to a
21 loss of functional capacity to perform
22 (without substantial assistance from an-
23 other individual) at least 2 of the following
24 activities: eating, transferring, or mobility.

1 “(iii) The individual is under 2 years
2 of age and requires specific durable med-
3 ical equipment by reason of a severe health
4 condition or requires a skilled practitioner
5 trained to address the individual’s condi-
6 tion to be available if the individual’s par-
7 ents or guardians are absent.

8 “(C) PSYCHOLOGICAL DISABILITY DE-
9 FINED.—The term ‘psychological disability’
10 means any diagnosable clinical condition on
11 Axis I or Axis II of the current edition of the
12 American Psychiatric Association’s Diagnostic
13 and Statistical Manual of Mental Disorders
14 which is of a severity that requires substantial
15 supervision or residence in a psychiatric hos-
16 pital or similar residential facility approved by
17 the Secretary.

18 “(D) MENTAL RETARDATION DEFINED.—
19 The term ‘mental retardation’ means any devel-
20 opmental disability (as defined in section 102 of
21 the Developmental Disabilities Assistance and
22 Bill of Rights Act (42 U.S.C. 15002)) which is
23 of a severity that requires substantial super-
24 vision or residence in an intermediate care facil-
25 ity for the mentally retarded, or similar residen-

1 tial facility approved by the Secretary of Health
2 and Human Services.

3 “(2) ELIGIBLE CAREGIVER.—

4 “(A) IN GENERAL.—A taxpayer shall be
5 treated as an eligible caregiver for any taxable
6 year with respect to the following individuals:

7 “(i) The taxpayer.

8 “(ii) The taxpayer’s spouse.

9 “(iii) An individual with respect to
10 whom the taxpayer is allowed a deduction
11 under section 151 for the taxable year.

12 “(iv) An individual who would be de-
13 scribed in clause (iii) for the taxable year
14 if section 152(d)(1)(B) were applied by
15 substituting for the exemption amount an
16 amount equal to the sum of the exemption
17 amount, the standard deduction under sec-
18 tion 63(c)(2)(C), and any additional stand-
19 ard deduction under section 63(c)(3) which
20 would be applicable to the individual if
21 clause (iii) applied.

22 “(v) An individual who would be de-
23 scribed in clause (iii) for the taxable year
24 if—

1 “(I) the requirements of subpara-
2 graph (B) are met with respect to the
3 individual in lieu of the support test
4 of section 152(c)(1)(D) or
5 152(d)(1)(C), as the case may be, and

6 “(II) in the case of an individual
7 who is not a qualifying child (as de-
8 fined in section 152(d)) for the tax-
9 able year, the requirements of clause
10 (iv) are met with respect to the indi-
11 vidual.

12 “(B) RESIDENCY TEST.—The require-
13 ments of this subparagraph are met if an indi-
14 vidual has as his principal place of abode the
15 home of the taxpayer for the taxable year
16 and—

17 “(i) in the case of an individual who
18 is an ancestor or descendant of the tax-
19 payer or the taxpayer’s spouse, is a mem-
20 ber of the taxpayer’s household for over
21 half the taxable year, or

22 “(ii) in the case of any other indi-
23 vidual, is a member of the taxpayer’s
24 household for the entire taxable year.

1 “(C) SPECIAL RULES WHERE MORE THAN
2 1 ELIGIBLE CAREGIVER.—

3 “(i) IN GENERAL.—If more than 1 in-
4 dividual is an eligible caregiver with re-
5 spect to the same applicable individual for
6 taxable years ending with or within the
7 same calendar year, a taxpayer shall be
8 treated as the eligible caregiver if each
9 such individual (other than the taxpayer)
10 files a written declaration (in such form
11 and manner as the Secretary may pre-
12 scribe) that such individual will not claim
13 such applicable individual for the credit
14 under this section.

15 “(ii) NO AGREEMENT.—If each indi-
16 vidual required to file a written declaration
17 under clause (i) does not do so, the indi-
18 vidual with the highest modified adjusted
19 gross income (as defined in subsection
20 (b)(2)) shall be treated as the eligible care-
21 giver.

22 “(iii) MARRIED INDIVIDUALS FILING
23 SEPARATELY.—In the case of married indi-
24 viduals filing separately, the determination
25 under this subparagraph as to whether the

1 husband or wife is the eligible caregiver
2 shall be made under the rules of clause (ii)
3 (whether or not one of them has filed a
4 written declaration under clause (i)).

5 “(d) IDENTIFICATION REQUIREMENT.—No credit
6 shall be allowed under this section to a taxpayer with re-
7 spect to any applicable individual unless the taxpayer in-
8 cludes the name and taxpayer identification number of
9 such individual, and the identification number of the phy-
10 sician or licensed independent practitioner licensed by the
11 State to render relevant diagnosis certifying such indi-
12 vidual, on the return of tax for the taxable year.

13 “(e) TAXABLE YEAR MUST BE FULL TAXABLE
14 YEAR.—Except in the case of a taxable year closed by rea-
15 son of the death of the taxpayer, no credit shall be allow-
16 able under this section in the case of a taxable year cov-
17 ering a period of less than 12 months.

18 “(f) TERMINATION.—This section shall not apply to
19 taxable years beginning after December 31, 2010.”.

20 (b) CONFORMING AND CLERICAL AMENDMENTS.—

21 (1) Paragraph (2) of section 6213(g) of such
22 Code (relating to mathematical or clerical error) is
23 amended—

24 (A) by striking “and” at the end of sub-
25 paragraph (L), by striking the period at the

1 end of subparagraph (M) and inserting “, and”,
 2 and by inserting after subparagraph (M) the
 3 following new subparagraph:

4 “(N) an omission of a correct TIN or phy-
 5 sician identification required under section
 6 36(d) (relating to family care credit) to be in-
 7 cluded on a return.”, and

8 (B) in the matter preceding clause (i) of
 9 subparagraph (L), by striking “or 32” and in-
 10 serting “32, or 36”.

11 (2) The table of sections for subpart C of part
 12 IV of subchapter A of chapter 1 of such Code is
 13 amended by striking the item relating to section 36
 14 and inserting the following:

“Sec. 36. Family care credit.
 “Sec. 37 Overpayments of tax.”.

15 (c) APPROPRIATIONS FOR REFUND.—Section
 16 1324(b)(2) of title 31, United States Code, is amended
 17 by striking “or 53(e)” and inserting “, 53(e), or 36”.

18 (d) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to taxable years beginning after
 20 December 31, 2008.

21 **SEC. 3. MODIFICATION OF DEPENDENT CARE CREDIT.**

22 (a) CREDIT ALLOWED FOR COSTS INCURRED TO
 23 CARE FOR PARENT AND GRANDPARENTS WHO DO NOT
 24 LIVE WITH TAXPAYER.—Paragraph (1) of section 21(b)

1 of the Internal Revenue Code of 1986 (defining qualifying
 2 individual) is amended by striking “or” at the end of sub-
 3 paragraph (B), by striking the period at the end of sub-
 4 paragraph (C) and inserting “, or”, and by adding at the
 5 end the following new subparagraph:

6 “(D) in the case of taxable years beginning
 7 in 2009 and 2010, an individual described in
 8 subparagraph (B) (determined without regard
 9 to whether such person has the same principal
 10 place of abode as the taxpayer for any part of
 11 such taxable year) who is the taxpayer’s mother
 12 or father (or an ancestor of either).”.

13 (b) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to taxable years beginning after
 15 December 31, 2008.

16 **SEC. 4. DEPENDENT CARE ASSISTANCE PROGRAM EXCLU-**
 17 **SION LIMITATION TO BE APPLIED WITH RE-**
 18 **SPECT TO EACH QUALIFYING INDIVIDUAL.**

19 (a) IN GENERAL.—Subsection (e) of section 129 of
 20 the Internal Revenue Code of 1986 (relating to definitions
 21 and special rules) is amended by adding at the end the
 22 following new paragraph:

23 “(10) INCREASED EXCLUSION LIMITATION FOR
 24 2009 AND 2010.—

1 “(A) IN GENERAL.—In the case of taxable
2 years beginning in 2009 and 2010, subsection
3 (a)(2)(A) shall be applied by substituting ‘pro-
4 vided during a taxable year for each qualifying
5 individual with respect to the taxpayer’ for ‘pro-
6 vided during a taxable year’. For purposes of
7 the preceding sentence, not more than 4 indi-
8 viduals may be treated as qualifying individuals
9 at any one time.

10 “(B) IDENTIFYING INFORMATION RE-
11 QUIRED WITH RESPECT TO QUALIFYING INDIVIDUALS.—No amount paid or incurred by an
12 employer for dependent care assistance provided
13 to an employee with respect to a qualifying in-
14 dividual shall be excluded from the gross in-
15 come of such employee by application of sub-
16 paragraph (A) unless the TIN of such indi-
17 vidual is included on the return claiming the
18 credit.”.

20 (b) CONFORMING AMENDMENT.—Subsection (c) of
21 section 21 of such Code (relating to dollar limit on amount
22 creditable) is amended by inserting “(but not below zero)”
23 after “shall be reduced”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2008.

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